



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,546	07/22/2003	Germanus Kong	T937242.1	6038

7590 07/21/2005

Grant W. C Tisdall
Suite 4900
Commerce Court West
Toronto, ON M5L 1J3
CANADA

EXAMINER

KATCHEVES, BASIL S

ART UNIT	PAPER NUMBER
----------	--------------

3635

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,546

Applicant(s)

KONG, GERMANUS

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/9/05
6/1/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Marked figure.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, and 9-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,164,105 to Herbst et al.

Regarding claim 1, Herbst discloses a barrier of variable dimension (figs. 3a, 4 & 5) comprised of a planar frame. Herbst discloses the barrier as having a first member with a base and pair of tabs (marked fig. 1) making a female connector. Herbst also discloses a second member having a pair of flanges (marked fig. 1) making a male connector, the tabs overlapping the flanges (fig. 2), a plurality of channel portions (marked fig. 1) for making a continuous channel around the frame and an insect screen (column 4, lines 9-10) closing the opening of the frame. Also, Herbst discloses edge portions (marked figure) which are folded toward each other to form a pair of tabs providing a female connection which overlap with the tabs of an adjacent member. Applicant should note that the term “folded” is a process limitation involved in the production step, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in

Art Unit: 3635

the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

Regarding claim 2, Herbst discloses the overlap of tabs and flanges as providing a frictional fit between members (fig. 2: see snap fit 42 of first and second members).

Regarding claim 3, Herbst discloses a supplementary fastener for securing the frame (fig. 1: 7).

Regarding claim 4, Herbst discloses a mechanical fastener comprised of a screw (fig. 1: 7).

Regarding claim 5, Herbst discloses the channel (marked fig. 1) as having an opening which faces the interior of the frame (marked fig. 1: arrow).

Regarding claim 6, Herbst discloses the first member (fig. 1: 4) as being a corner member (fig. 1: 23) and the second member as being a side member (fig. 2: see 4 extending along side).

Regarding claim 9, Herbst discloses the channel portion (marked fig. 1) as being an extension of a tab (marked fig. 1).

Regarding claim 10, Herbst discloses the second member as being a key (fig. 1: 42) for joining two adjacent first members (fig. 2: see adjacent first members 1 & 23 joined by 4 & 42).

Regarding claim 11, Herbst discloses the second member as being at a corner (fig. 2: 4) and the first member as being at a side (fig. 2: 1).

Regarding claim 12, Herbst discloses the key (fig. 3: 42) member as being connected to a base (fig. 3: connected to base of 4) of the corner member (see rejection of claim 11 for corner member) and a male connector (fig. 3: vicinity of 12) at the other end.

Regarding claim 13, Herbst discloses the key (fig. 3: 42) as providing an abutment of the channel portion (fig. 3: see abutment of channel in 1 abutted with key of 4).

Regarding claim 14, Herbst discloses a grouping of parts which make a barrier of variable dimension (figs. 3a, 4 & 5) comprised of a planar frame. Herbst discloses the barrier as having a first member with a base and pair of tabs (marked fig. 1) making a female connector. Herbst also discloses a second member having a pair of flanges (marked fig. 1) making a male connector, the tabs overlapping the flanges (fig. 2), a plurality of channel portions (marked fig. 1) for making a continuous channel around the frame and an insect screen (column 4, lines 9-10) closing the opening of the frame. Also, Herbst discloses edge portions (marked figure) which are folded toward each other to form a pair of tabs providing a female connection which overlap with the tabs of an adjacent member. Applicant should note that the term "folded" is a process limitation involved in the production step, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

Regarding claim 15, Herbst discloses the use of a screen in the frame (column 4, lines 9-10).

Regarding claims 16 and 17, the frame group of Herbst is capable of conforming to a catch basin opening.

Regarding claims 18 and 19, Herbst discloses the first and second members as forming a continuous flange (fig. 3a: see continuous perimeter) in the assembled state.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained, though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,164,105 to Herbst et al.

Regarding claim 7, Herbst does not disclose a side length as being variable. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Herbst by trimming the side lengths, as trimming

frame members on site is common in the art in order to fit the frame to particular variances in applications.

Regarding claim 8, Herbst discloses four right angle corner members (fig. 3a: 2) and at least four side members (fig. 3a: 4).

Response to Arguments

Applicant's arguments filed 5/3/05 have been fully considered but they are not persuasive. Applicant argues that the flanges and male connectors are not configured to be received in the female portion, as labeled by the examiner. However, the claim states only that flanges provide a male connector which is configured to be received by the female connector. This is shown in the drawings of Herbst as stated in the rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3635

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK


Basil Katcheves

7/14/05

Primary Examiner

